

PAUL B. SNYDER  
United States Bankruptcy Judge  
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February 26, 2009

MARK L. HATCHER  
CLERK U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA  
DEPUTY

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re:

Case No. 08-42733

JAMES LEROY LEHMAN  
TAMARA LYNN LEHMAN,

Debtors.

**MEMORANDUM DECISION**

**NOT FOR PUBLICATION**

THIS MATTER came before the Court on February 3, 2009, on an Objection to Exemption filed by the Chapter 7 Trustee (Trustee) for the estate of James and Tamara Lehman (Debtors). At the hearing, the Court tentatively ruled in favor of the Trustee, but provided the Debtors with the opportunity to submit additional briefing in support of their position. The Debtors filed a supplemental letter with the Court and corresponding attachments on February 10 and 11, 2009. This Memorandum Decision shall constitute Findings of Fact and Conclusions of Law as required by Fed. R. Bankr. P. 7052.

**I**

**FINDINGS OF FACT**

The Debtors own a home located at 23922 Z Place, Ocean Park, Washington (Property). The Property is listed on the Debtors' Schedule A with a value of \$200,000 and a loan balance of \$109,823.44. On Schedule C, the Debtors claim the equity in the Property

1 exempt under RCW 6.13.010, .020 and .030. The residence on the Property was apparently  
2 damaged by a storm prepetition. Two months prior to filing bankruptcy, the residential  
3 owner's insurance carrier paid the Debtors \$5,800 for storm damage to the home's roof. The  
4 Debtors deposited the check into an account at Great Northwest Federal Credit Union  
5 (Account). The Debtors' paychecks were also transferred into this Account by direct deposit,  
6 and funds were withdrawn from the Account by the Debtors to pay household expenses.

7  
8 On Schedule C, the Debtors claim an exemption in the amount of \$200, in funds held in  
9 a checking account at Great Northwest Federal Credit Union under RCW 6.15.010(3)(b), and  
10 in the amount of \$5,800 held in the Account under RCW 6.13.070 described as "holding  
11 proceeds from insurance for roof storm damage." The Trustee objects to any claim of  
12 exemption under RCW 6.13.070.

## 13 II

### 14 CONCLUSIONS OF LAW

15 The Trustee argues that the Debtors are not entitled to an exemption of \$5,800 in the  
16 Account under RCW 6.13.070, because the insurance proceeds were not placed in a  
17 segregated bank account and were commingled with other non-exempt funds. According to  
18 the Trustee, the funds lost their exempt status. At the hearing held on February 3, 2009, the  
19 Court tentatively agreed with the Trustee and orally ruled that the Debtors were unable to  
20 exempt the insurance proceeds. Utilizing the "first in, first out" tracing methodology adopted  
21 by the bankruptcy court in In re Burke, 2005 Bankr. LEXIS 1886 (Bankr. D. Or. August 2,  
22 2005), the Trustee provided evidence that more funds were withdrawn from the Account than  
23 had been originally deposited in the form of the insurance proceeds. Thus, the Debtors were  
24 unable to trace any of the current funds on deposit to the insurance proceeds.  
25

1 After further consideration of the Burke case, the Court finds it to be distinguishable.  
2 The issue in Burke was the ability of a debtor to claim an exemption under Oregon law in an  
3 earned income tax refund that had been commingled with non-exempt funds. The bankruptcy  
4 court determined that the funds at issue retained their exempt status to the extent that they  
5 were traceable and utilized the “first in, first out” method to trace the funds. Burke, 2005  
6 Bankr. LEXIS, at \*11. The distinction between that case and the one before the Court is the  
7 language of the respective state statutes.

8  
9 In Burke, the Oregon statute specifically provided that a debtor may exempt “the  
10 debtor’s right to receive an earned income tax credit under the federal tax laws and any  
11 moneys that are traceable to a payment of an earned income tax credit under the federal tax  
12 laws.” ORS 18.345(1)(n) (emphasis added); Burke, 2005 Bankr. LEXIS, at \*7. The  
13 Washington state statute at issue in the case before this Court provides:

14 The proceeds of the voluntary sale of the homestead in good faith for the purpose  
15 of acquiring a new homestead, and proceeds from insurance covering destruction  
16 of homestead property held for use in restoring or replacing the homestead  
17 property, up to the amount specified in RCW 6.13.030, shall likewise be exempt  
for one year from receipt, and also such new homestead acquired with such  
proceeds.

18 RCW 6.13.070.

19 Thus, unlike the Oregon statute in Burke, the Washington statute does not contain an  
20 explicit requirement that the funds at issue be “traceable.” The only limitations set forth in  
21 RCW 6.13.070 are the amount exempt, that the funds be proceeds from insurance covering  
22 the destruction of homestead property held for use in restoring or replacing homestead  
23 property, and the duration that such funds shall be exempt - one year from receipt.

24 The Trustee, as the party objecting to the Debtors’ claim of exemption, has the burden  
25 of proving the exemption is improper. Fed. R. Bankr. P. 4003(c). The Trustee has not

1 provided, and the Court is unaware of any Washington State case resolving this issue. The  
2 Court therefore examined case law from other jurisdictions interpreting similar homestead  
3 statutes. For example, in Keleher v. Technicolor Gov't Svcs., Inc. (In re Keleher), 829 F.2d  
4 691 (8th Cir. 1987), the Eighth Circuit addressed the issue of whether proceeds from the sale  
5 of homestead property lost their exempt status under South Dakota law simply because they  
6 were commingled with non-exempt monies in a savings account. As in Washington, the  
7 South Dakota statute does not contain an explicit requirement that the funds be held in a  
8 separate account or traceable. The Eighth Circuit reversed the lower court and determined  
9 that the homestead proceeds did not lose their exempt status when commingled with non-  
10 exempt funds. Keleher, 829 F.2d at 693.

12 Homestead exemption laws are favored in Washington State and are to be liberally  
13 construed. First Nat'l Bank of Everett v. Tiffany, 40 Wn.2d 193, 202 (1952). Although some  
14 states have chosen to explicitly include a tracing requirement in their homestead statutes, the  
15 Washington legislature has not chosen to add such language to RCW 6.13.070. Compare,  
16 A.R.S. § 33-1101(C) (allowing exemption for 18 months in "identifiable cash proceeds"); In re  
17 Foreacre, 358 B.R. 384, 389 (Bankr. D. Ariz. 2006) (interpreting A.R.S. § 33-1101(C) to  
18 require the proceeds be kept in a separate account and not commingled); C.R.S.A. § 38-41-  
19 207 (2000) (providing that the proceeds from the sale of the homestead are exempt for up to  
20 two years after sale if kept in a separate account and identifiable); and In re Polimino, 345  
21 B.R. 708, 711 (10th Cir. BAP 2006) (stating that C.R.S.A. § 38-41-207 exempts proceeds  
22 from the sale of the homestead if kept in a separate account).

24 RCW 6.13.070 does not contain a requirement that the insurance proceeds be  
25 traceable or kept in a separate account in order to maintain an exempt status. All that is

1 required is that they be received from insurance proceeds for the destruction of homestead  
2 property and held for use in restoring and replacing homestead property. If so, they will  
3 remain exempt whether commingled, for one year. There is no allegation that the funds at  
4 issue do not otherwise qualify as exempt funds. The Trustee's objection to exemption is  
5 therefore denied.

6 DATED: February 26, 2009

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9 Paul B. Snyder  
10 U.S. Bankruptcy Judge  
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